## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

CHERYL CALDWELL, Individually and	§	
on Behalf of All Others Similarly Situated,	§	
	§	
Plaintiff,	§	
	§	
V.	§	
	§	Civil Action No. 3:17-cv-1552-C
REO CONTRACTORS, INC., KINDALE	§	
PITTMAN, individually, and HOLLY	§	Jury Demanded
KIRK, individually,	§	
	§	
Defendants.	§	
	§	
	§	

# PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PLAINTIFF'S MOTION FOR CONTINUANCE

**COMES NOW** Plaintiff, Cheryl Caldwell, and files this Response to Defendants' Motion for Summary Judgment or, in the alternative, Plaintiff's Motion for Continuance.

#### A. SUMMARY

- 1. Plaintiff filed her original complaint alleging that Defendants violated the overtime provisions of the Fair Labor Standards Act ("FLSA") on June 9, 2017 (Doc. 1).
- 2. Defendants filed an answer to the original complaint on July 20, 2017 (Doc. 5).
- 3. On October 1, 2018, Defendants filed their Motion for Summary Judgment together with a Brief and Appendix in support (Doc. 26–Doc. 28). On October 12, 2018, Defendants filed a supplemental motion, brief, and appendix in support (Docs. 32–34).
- 4. Plaintiff's Deadline to respond to the Motion for Summary Judgment was extended to November 7, 2018 (Doc. 42). This Response is filed before that deadline expires.

5. The basis of Defendants' Motion for Summary Judgment is Defendants' claim that they

properly classified Plaintiff as administratively-exempt employee under the FLSA.

6. Under Federal Rule of Civil Procedure 56, Defendants are not entitled to summary

judgment on this basis. The evidence presented by Defendants is insufficient to establish that

there is no genuine issue of material fact. As set out in the Brief and Appendix in support of this

Response, there are genuine issues of material fact as to whether Defendants properly classified

Plaintiff as exempt from overtime under the administrative exemption to the FLSA.

7. Pursuant to Local Rule 56.4(b), each of the required matters set forth in Local Rule

56.4(a) is set forth in the Brief in Support of Plaintiff's Response to Defendants' Motion for

Summary Judgment filed in this case.

8. In the alternative, the Court should stay briefing on Defendants' Motion for Summary

Judgment until after it rules on Plaintiff's Motion to Compel (Doc. 39), and, if Plaintiff's motion

is granted in whole or in part, allow Plaintiff to obtain the discovery sought and, after a short but

reasonable time, allow Plaintiff to supplement this response in opposition to Defendants' motion

with newly acquired evidence.

Respectfully submitted,

<u>/s/ Travis Gasper</u>

J. DEREK BRAZIEL

Co-Attorney in Charge Texas Bar No. 00793380

Texas Dar No. 00/93380

jdbraziel@l-b-law.com

TRAVIS GASPER

Texas Bar No. 24096881

gasper@1-b-law.com

Lee & Braziel, L.L.P.

1801 N. Lamar Street, Suite 325

Dallas, Texas 75202

(214) 749-1400 phone

(214) 749-1010 fax

### ATTORNEYS FOR PLAINTIFF

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record through the Court's ECF system as of the date file-stamped thereon.

/s/ Travis Gasper

TRAVIS GASPER